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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 PETE LIVINGSTON,

No. C-06-2389 MMC

12 Plaintiff,

**ORDER GRANTING NOVA WINES,
INC.'S UNOPPOSED MOTION TO
DISMISS; VACATING HEARING**

13 v.

14 KEYA MORGAN aka KEYARASH MAZHARI
15 aka KEYA MAZHARI, et al.,

(Docket No. 53)

16 Defendants.
17 _____/

18 Before the Court is defendant Nova Wines, Inc.'s ("Nova") motion, pursuant to Rule
19 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the sole claim asserted against
20 it in the First Amended Complaint. In the alternative, Nova moves for a more definite
21 statement, pursuant to Rule 12(e). To date, plaintiff Pete Livingston ("Livingston") has not
22 filed opposition to the motion.¹ Having considered the papers filed in support of the motion,
23 the Court finds the matter appropriate for resolution without oral argument, see Civil L.R.
24 7-1(b), VACATES the October 27, 2006 hearing, and rules as follows.

25 In an order filed July 31, 2006, the Court dismissed Livingston's copyright claim, as
26 asserted against Nova, because Livingston "failed to identify the specific photograph Nova
27 purportedly infringed or to identify the specific acts of infringement by Nova[.]" (See Order
28 _____)

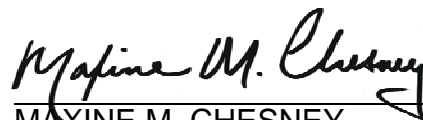
¹ Pursuant to Civil Local Rule 7-3, Livingston's opposition was due no later than October 6, 2006.

1 Granting Nova Wines, Inc.'s Motion to Dismiss, filed July 31, 2006, at 6.) On September 1,
2 2006, Livingston timely filed an amended complaint, in which Livingston adequately set
3 forth the asserted acts of infringement. (See First Amended Complaint ¶ 13(a).) As Nova
4 points out, however, Livingston still fails to identify the specific photograph Nova assertedly
5 infringed. Consequently, Livingston has not remedied the defects identified by the Court in
6 its prior dismissal order.

7 Accordingly, Nova's motion to dismiss is hereby GRANTED. Because Nova does
8 not seek dismissal with prejudice, and because Livingston may be able to successfully
9 amend his complaint, the Court will afford Livingston an additional opportunity to amend,
10 and any amended complaint shall be filed no later than November 9, 2006. If Livingston
11 fails to file an amended complaint by that date, his copyright claim, as asserted against
12 Nova, will be deemed dismissed with prejudice.

13 **IT IS SO ORDERED.**

14 Dated: October 17, 2006

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16 MAXINE M. CHESNEY
17 United States District Judge
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